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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FACEBOOK, INC., and MARK ZUCKERBERG, Plaintiffs, v. CONNECTU LLC, (now known as CONNECTU INC.) CAMERON WINKLEVOSS, TYLER WINKLEVOSS, DIVYA NARENDRA, PACIFIC NORTHWEST SOFTWARE, INC., WINSTON WILLIAMS, WAYNE CHANG, and DAVID GUCWA, Defendants.	CASE NO. C 07-01389 RS **DECLARATION OF SCOTT R. MOSKO IN SUPPORT OF PLAINTIFFS' ADMINISTRATIVE REQUEST PURSUANT TO LOCAL CIVIL RULE 79-5(b) & (d) TO FILE UNDER SEAL EXHIBITS C, E, L, M, O, U, X, AND CC TO THE DECLARATION OF THERESA A. SUTTON IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS** **~~[PROPOSED~~ ORDER]** Date: October 10, 2007 Time: 9:30 a.m. Dept.: 4 Judge: Hon. Richard Seeborg

Dockets.Justia.com

I, Scott R. Mosko, declare as follows:

I am a partner with the law firm of Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., counsel of record for Defendants ConnectU LLC, Cameron Winklevoss, Tyler Winklevoss and Divya Narendra in the above captioned matter. This declaration is based on my personal knowledge and, if called as a witness, could and would competently testify thereto.

1. The following materials designated by the Plaintiffs in their Administrative Request Pursuant to Local Civil Rule 79-5(b) & (d) to File Under Seal Exhibits C, E, L, M, O, U, X, and CC to the Declaration of Theresa A. Sutton in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss ("Sutton Declaration") for Filing Under Seal are confidential and sealable in their entirety:

- **Exhibit CC** to the Declaration of Theresa A. Sutton filed in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss is a copy of Facebook's Motions to Compel filed in the Superior Court for the County of Santa Clara action, Case No. 1:05-CV-047381. These motions contain references to documents and deposition testimony produced by ConnectU that ConnectU marked Confidential. Accordingly, the Motions to Compel were marked Confidential by Facebook pursuant to the Protective Order entered in that matter. This exhibit should be sealed from public viewing pursuant to Local Civil Rule 79-5(b) and (d) and should remain sealed from public view.

2. The following materials in Plaintiffs Administrative Request Pursuant to Local Civil Rule 79-5(b) & (d) to File Under Seal Exhibits C, E, L, M, O, U, X, and CC to the Declaration of Theresa A. Sutton in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss were designated by the Defendants as confidential or highly confidential and sealable in their entirety:

- **Exhibit C** to the Declaration of Theresa A. Sutton filed in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss is a copy of Defendants' Reply to Facebook's Opposition to Defendants Motion to Quash, filed on May 24, 2006, Santa Clara County Superior Court, Case No. 1:05-CV-047381. It has been marked Confidential by ConnectU pursuant to the Protective Order entered in this matter, and hence is subject to Local Civil Rule 79-5(d) and should remain sealed from public view.

- **Exhibit E** to the Declaration of Theresa A. Sutton filed in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss is a copy of relevant exhibits from ConnectU's production in the Massachusetts action, *ConnectU LLC v. Zuckerberg, et al.*, Case No. 1:04-CV-11923-DPW. These documents have been marked Confidential by ConnectU pursuant to the Protective Order entered in that matter, and hence is subject to Local Civil Rule 79-5(d) and should remain sealed from public view.

- **Exhibit L** to the Declaration of Theresa A. Sutton filed in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss is a copy of relevant exhibits from Pacific Northwest Software's production. These documents have been marked Confidential by Pacific Northwest Software pursuant to the Protective Order entered in this matter, and hence is subject to Local Civil Rule 79-5(d) and should remain sealed from public view.

- **Exhibit M** to the Declaration of Theresa A. Sutton filed in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss is a copy of relevant exhibits from ConnectU's production in this action. These documents have been marked Confidential by ConnectU pursuant to the Protective Order entered in this matter, and hence is subject to Local Civil Rule 79-5(d) and should remain sealed from public view.

- **Exhibit O** to the Declaration of Theresa A. Sutton filed in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss is a copy of relevant excerpts from Winston Williams' June 19, 2007, deposition. The deposition testimony has been marked Confidential by Winston Williams pursuant to the Protective Order entered in this matter, and hence is subject to Local Civil Rule 79-5(d) and should remain sealed from public view.

- **Exhibit U** to the Declaration of Theresa A. Sutton filed in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss is a copy of ConnectU LLC's August 5, 2005, Operating Agreement produced in the Massachusetts action, *ConnectU LLC v. Zuckerberg, et al.*, Case No. 1:04-CV-11923-DPW. It was marked Confidential by ConnectU pursuant to the Protective Order entered in that matter, and hence is subject to Local Civil Rule 79-5(d) and should remain sealed from public view.
- **Exhibit X** to the Declaration of Theresa A. Sutton filed in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss is a copy of ConnectU's Supplemental Brief in Support of Opposition to Motion to Dismiss filed in the Massachusetts action, *ConnectU LLC v. Zuckerberg, et al.*, Case No. 1:04-CV-11923-DPW. It was marked Confidential by ConnectU pursuant to the Protective Order entered in that matter. This exhibit should be sealed from public viewing pursuant to Local Civil Rule 79-5(d) and should remain sealed from public view.

I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Executed on October 4, 2007, at Palo Alto, California

/s/ *Scott R. Mosko*
Scott R. Mosko

~~[PROPOSED]~~ ORDER

Upon good cause shown, **IT IS HEREBY ORDERED** that the following documents shall be received and filed under seal in their entireties by the Clerk:

Exhibits C, E, L, M, O, U, X, and CC to the September 19, 2007 Declaration of Theresa A. Sutton in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss.

Dated: October 9, 2007

United States Magistrate Judge